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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

October Term, 1939.

No. ~~759~~. 1 3

HARRY BRIDGES,

Petitioner,

vs.

STATE OF CALIFORNIA.

MEMORANDUM. AMICUS CURIAE. IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

HARRY GRAHAM BALTER,
639 South Spring Street, Los Angeles,
For the National Lawyers Guild, Los Angeles Chapter,
Amicus Curiae.

CAREY McWILLIAMS,
ELLIS E. PATTERSON,
GEORGE BODLE,
Of Counsel.

Parker & Baird Company, Law Printers, Los Angeles.

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IN THE

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October Term, 1939.
No. 759.

HARRY BRIDGES,

Petitioner,

vs.

STATE OF CALIFORNIA.

MEMORANDUM, AMICUS CURIAE, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

To the Supreme Court of the United States:

The National Lawyers Guild, Los Angeles Chapter, respectfully alleges:

A.

The Interests of the National Lawyers Guild, Los Angeles Chapter.

The National Lawyers Guild is a nation-wide association of liberal and progressive-minded lawyers, numbering in excess of five thousand members. There are chapters in the nation's principal cities. The Los Angeles Chapter

is a regularly constituted Chapter of the National Lawyers Guild, numbering in excess of one hundred active members of the State Bar of California.

The National Lawyers Guild has since its inception devoted itself to the cause of civil liberties and the related rights of freedom of speech, freedom of press and freedom of assembly. In fact, the preservation and extension of these fundamental constitutional rights is one of the pillars of the program of the National Lawyers Guild. (From the Preamble, adopted February 22, 1937:

> ". . . This organization aims to bring together all lawyers . . . who recognize the importance . . . of maintaining our civil rights and liberties and our democratic institutions, and who look upon the law as a living and flexible instrument which must be adapted to the needs of the people."

A committee on Civil Rights and Liberties was one of the original standing committees provided for by the By-Laws.)

The militant and effective work of the National Lawyers Guild in this field has done much to prod the conservative and cautious American Bar Association into creating its own capable and active Committee on Bill of Rights. (For current developments in the work of this committee, see XXVI American Bar Association Journal. 118, February, 1940.)

The interests of the Los Angeles Chapter of the National Lawyers Guild in the case at bar has no relation

whatever to the economic or social views of the petitioner, Harry Bridges, or to his importance, *vel non*, as a leader in the ranks of labor. Its interest is solely based on its deep conviction that an important issue of freedom of speech is involved.

In fact, it is the intent of the Los Angeles Chapter of the National Lawyers Guild to file a Memorandum *Amicus Curiae* in Support of a Petition for Certiorari in the case of the Los Angeles "Times" v. The State of California, which is in a real sense a companion case. The "Times" is notorious for its conservative political and economic views, and its militant opposition to the views of Harry Bridges.

In any event, the Los Angeles Chapter of the National Lawyers Guild wants this Court to know that the Los Angeles Bar Association, which, through its Judiciary Independence Committee, acted as prosecutor both of the petitioner, and of the Los Angeles "Times" acted *not* for for the entire bar of Los Angeles. The Guild is in stout disaccord with both prosecutions. It publicly and vigorously protested both prosecutions. It is of the earnest conviction that the constitutional right of freedom of speech and freedom of the press of both the petitioner and of the Los Angeles "Times" have been abridged. We share wholeheartedly the dissenting views of Justices Gibson and Edmonds in the court below.

B.

The Petition for a Writ of Certiorari Should Be Granted.

1. THERE IS AN IMMEDIATE NEED FOR CLARIFICATION AS TO WHAT TEST OR TESTS THE SUPREME COURT DEEMS IT PROPER TO APPLY TO THE POWERS OF A COURT TO PUNISH FOR CONTEMPT BY PUBLICATION.

A close reading of the majority and dissenting opinions in both the *Bridges* and the *"Times"* cases makes crystal-clear the essential conflict of views.* It is not a sufficient reply to say that this Court has settled the question. In fact the contrary would seem to be the present status in light of this Court's decision in *Herndon v. Lowrey* (301 U. S. 342), where it would seem this Court enunciated the test contended for by both the petitioner, Harry Bridges, and the Los Angeles "Times" in the cases below. Yet, this Court's earlier decision in *Toledo Newspaper Co. v. United States* (247 U. S. 242) will remain the yardstick for such State and inferior Federal tribunals which prefer to apply the more drastic view of what constitutes contempt by publication enunciated by that decision, as is clearly shown by the prevailing opinions in the case at bar and in the case of the Los Angeles "Times." The need for harmonizing these conflicting views seems patent and urgent.

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*The decision of the Supreme Court of California in the *Bridges* case appears at R. 177; the *Times* case is reported in 99 Cal. Dec. 108.

2. THE CASE AT BAR AND THE COMPANION CASE OF THE LOS ANGELES "TIMES" HAVE CRYSTALIZED THE BROAD CONSTITUTIONAL QUESTIONS INVOLVED AND HAVE FOCUSED PUBLIC CONCERN ON THE APPARENT OR REAL CONFLICT BETWEEN THE RIGHT OF THE JUDICIARY TO MAINTAIN ITS DIGNITY AND INDEPENDENCE AND THE CORRELATIVE RIGHT OF THE INDIVIDUAL AND OF THE PRESS IN A FREE NATION TO COMMENT OF PENDING ISSUES OF PUBLIC CONCERN.

The question of freedom of speech and freedom of the press and the encroachment thereon by the exercise of the judiciary's power to punish for contempt by publication has become a matter of widespread and national public concern. See, for example:

"Right of Judiciary to Punish Contempt by Publication Upheld by Supreme Court"—XIV California State Bar Journal, 377, December, 1939;

"Contempt by Publication"—XXVI American Bar Association Journal, 143, February, 1940;

"Journalism Quarterly"—issue of March, 1939, page 1;

"Yale Law Journal"—November, 1938, page 57;

14 *Notre Dame Lawyer*, No. 3, page 258.

The press dispatches under dates of March 10th and 11th, 1940, disclosing involvement of St. Louis *Post-Dispatch* in contempt proceedings for commenting on a dismissal of pending criminal action.

While we are happily not at war, we are rapidly approaching a state of near-hysteria. Particularly at such a juncture, the protection of civil rights, of freedom of speech and of freedom of the press becomes a sacred and honored duty of this Court. The case at bar presents a basic issue on which it is extremely timely for this Court to announce its stand. A clear position now enunciated will avoid the confusion and uncertainty which characterizes the present status of the law of contempt by publication.

Respectfully submitted,

HARRY GRAHAM BALTER,
For the National Lawyers Guild, Los Angeles Chapter, Amicus Curiae.

CAREY MCWILLIAMS,
ELLIS E. PATTERSON,
GEORGE BOLLE,
Of Counsel.